IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

S.A.Nos.847 of 1997

Mr.K.Karuppanna Gounder .. Appellant/Plaintiff

Vs.

1.The State of Tamil Nadu
rep by the District Collector,
Coimbatore.

2.Smt.Parvathammal .. Respondents/defendants

Prayer: This second appeal and cross-objection have been preferred against the decree and Judgment dated 25.06.1996, in A.S.No.211 of 1994 passed by the Principal District Judge, Coimbatore, reversing the decree and judgment dated 30.08.1994 in O.S.No.872 of 1985 on the file of the III Additional District Munsif, Coimbatore.

For Appellants : Mr.M.M.Sundresh
For Respondents : Mrs.R.Shanthi Rakkappan. Govt.Advocate (CS)
(for R1)
R.2 Notice dispensed with.

JUDGMENT

This second appeal has been preferred against the decree and judgment in A.S.No.211 of 1994 on the file of the Court of Principal District Judge, Coimbatore. The plaintiff, who has succeeded before the trial Court but lost his case in appeal, is the appellant herein. The suit is for bare injunction.

2. The verments in the plaint relevant for the purpose of deciding this appeal sans irrelevant particulars are as follows:-

2(a) The plaintiff is the lessee of 1 acre of land comprised in S.F.No.543/2 in Alandurai Village, Coimbatore Taluk. The 2nd defendant is the lessor The yearly lease amount is Rs.300/- and the lease was granted in the year 1956. The total extent of land comprised in S.F.No.543/2, Alandurai Village, is 4 acres and 76 cents and the plaintiff is a lessee of an extent of 1 acre and the balance remains in possession of one Velusamy Gounder as a lessee under its owners.

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2(b) The plaintiff is paying annual lease amount to the 2nd defendant since 1954 without default. The 2nd defendant is a very rich and influential lady and she is not in the habit of issuing receipts to her tenants and as such the plaintiff could not produce receipts to evidence his payment of rents. In January 1984, certain revenue officials came to S.F.No.543/2 and began to measure the land. On equiry it transpired that the 2nd defendant had executed a document purporting to be a gift in favour of D1. When the plaintiff questioned the 2nd defendant about this she informed that the gift deed executed by her infavour of the 1st defendant did not take effect and that she never parted with her title of the said land to the Government and that under threat, coercion and undue influence she (D2) had executed the said gift deed in favour of the 1st defendant. Even if the said gift deed is true and valid it cannot prevail upon the plaintiff's leasehold right. To avoid confrontation with the Government, the plaintiff represented to the Revenue Authorities to recognise him as a lessee or treat him as licencsee.

2(c) The plaintiff is in possession of the suit land. The plaintiff has been assessed to sivjima for the current year and the receipt is produced along with the plaint. The possession of the plaintiff cannot be disturbed except under due process of law. The 2nd defendant and her brother have developed misunderstanding with one Veluswamy Gounder who continues as a lessee in respect of the remaining extent of S.F.No.543/2. On the basis of the gift deed the 1st defendant is making attempts to remove the plaintiff from the suit property and forcibly attempting to take the possession of the suit property from the plaintiff. Some of the Revenue people came to the suit property on 5.6.1985 and measured the land. Since the plaintiff is in possession of the suit land as licencee he cannot be evicted forcibly without exhausting the procedures laid down under law. Hence, the suit.

3. The 1st defendant has filed a written statement contending as follows:-

3(a) The allegation that the plaintiff is a lessee of 1.00 acre of land in S.F.No.543/2 is a false one. Veluswamy Gounder S/o.Muthu Gounder alone is the lessee of the land as per the village accounts. The plaintiff has not filed any petition before the Record Officer and Tahsildar to record tenancy in his name and as such he has no right over the suit land. The alleged gift deed said to have been executed by the 2nd defendant is valid and binding on the plaintiff. As per the gift deed the Government has also taken possession of the suit land.

3(b) At the time of the construction of buildings by the Government the 2nd defendant filed a false suit against the Government and the same was dismissed. Therefore the 2nd defendant has instigated the plaintiff to file this suit. The plaintiff has encroached an extent of 1.05 acres in S.F.No.543/3 classified as Maternity Centre. The plaintiff is not a lessee and even otherwise he is not entitled to question the gift deed in favour of the Government. The B memo was issued for only for the

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encroachment in S.F.No.543/3 and he cannot rely upon the same for this case.

3(c) The plaintiff should prove his title and ought to have filed the suit for declaration. The plaintiff is not in possession and hence he is not entitled to the relief of injunction against the Government. The suit must fail for want of proper notice under Section 80 of C.P.C. Hence, the suit is liable to be dismissed with costs.

3(d) The second defendant remained exparte.

4. On the above pleadings the learned trial judge has framed two issues for trial. The plaintiff has examined himself as P.W.1 and executed Ex.A.1 to A.3. On behalf of the 1st defendant, VAO of the village in which the suit land is situated was examined as D.W.1 and Ex.B.1 to B.4 were marked.

5. After going through the oral and documentary evidence available before the trial Court, the learned trail judge has come to the conclusion that the plaintiff is entitled to an order of injunction as prayed for and accordingly decreed the suit but without costs. Aggrieved by the findings of the learned trial Judge, the plaintiff has preferred an appeal in A.S.No.211 of 2004 before the Principal District Judge, Coimbatore. The learned first appellate Judge after giving during consideration for the rival submissions of the parties and after due deliberations, has come to the conclusion that the plaintiff is not entitled to get any relief under the suit and accordingly allowed the appeal thereby dismissing the suit filed by the plaintiff. Hence, the second appeal before this Court by the plaintiff.

6. The substantial questions of law involved in this appeal are as follows:-

"a) Whether the appellate Court is justified in considering the adangal extract and in its finding that the plaintiff is not a lessee in possession of the suit properties?

b) Whether the relief sought for by 1st respondent is valid in law?

(c) Whether the notice under Section 80 of the Civil Procedure Code is necessary?"

7.The Points:-

7(a) Even though the suit is for bare injunction in fact the plaintiff has challenged the G.O. passed by the Government under Section 18(c) of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (herein after referred as the 'Act'), under Ex.B.1. The plaintiff claims that he is a lessee under the owner of the land (D2) but D2 remained exparte before the trial Court. To prove the possession the plaintiff relied on Ex.A.1 to A.3 Adangal extract for the fasali 1378, 1377 & 1379 respectively. Once the Government have acquired the land under Section 18 (1) of the Act, then the plaintiff has no locus-standi to contend that he is in possession of the suit land as a lessee under the original owner.

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Under Section 18 of the Act, the Government is empowered to acquire survey land for public purpose. The suit land has been acquired by the Government for constructing a Maternity Hospital. A notice under Section 18 of the Act has been published under the gazette by the Revenue Department in referrence No.II(1)/REV/24/86, dated 31.1.1986 and G.O.No.648 dated 09.12.1993 has been passed and the same has been published in the Tamil Nadu Government Gazette (Extraordinary) dated 09.12.1993. After the publication of the notification the land specified in the notification along with all the things attached to earth will pass to the Government. Clause 3 says what are the things that will pass along with the principal thing. The land together with the trees standing on such land and buildings, machinery, plant, apparatus, wells, filter points or power lines, constructed, erected or fixed on such land and used for agricultural purposes are deemed to have been acquired for a public purpose and vested in the Government free from all encumbrances with effect from the date of such publication and all right, title and interest of all persons in such land, will effect from the said date, be deemed to have been extinquished.

7(b) The learned counsel appearing for the appellant has also fairly conceded that the remedy open to the appellant is only to get compensation as per section 54 of the Act only if he proves that he is a cultivating tenant. In this case the plaintiff has not proved that he is a cultivating tenant registered under the record of Tenancy Act. The suit is hit for want of a statutory notice under Section 80 of C.P.C. because the plaintiff infact while challenging Ex.B.1-G.O. has asked for a relief of injunction against the Government-1st respondent. Section 80 of C.P.C. runs as follows:-

> "Notice:- (1) Save as otherwise provided in sub-section (2), no suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of_
>
> (a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government.
>
> (b) in the case of a suit against the Government where it relates to a railway, the General Manager of that railway;
>
> (bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;
>
> (c) in the case of a suit against any other State Government a Secretary to that Government or the Collector of the district.
>
> and, in the case of a public officer, delivered to him or left

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at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit;

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section(1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice_

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the accused of action and the relief claimed by the plaintiff had been substantially indicated."

The plaintiff has not issued any notice to the 1st defendant even before or after filing of the suit. So as rightly contended by the learned Government Advocate the suit itself is barred under Section 80 of C.P.C.

7(c) The learned first appellate judge has relying on 1994-2 Law Weekly 735 (Premji Ratansey Shah and others Vs. Union of India and others) has rightly held that injunction is a personal right under Section 41(j) of the Specific Relief Act, 1963 and that the plaintiff must have personal interest in the matter and the interest of right not shown to be in existence, cannot be protected by an order of injunction, which in my considered view do not require any interference from this Court. Under such circumstances, I do not find any illegality or infirmity in the findings of the learned first appellate Judge in arriving at the conclusion that the plaintiff is not entitled to the relief asked for under the plaint. Points are answered accordingly.

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8. In the result, the second appeal is dismissed confirming the decree and judgment in A.S.No.211 of 1994 on the file of the Principal District Judge, Coimbatore, with costs through out.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

To,
1. The Principal District Judge, Coimbatore.[with records, if any]
2. The III Additional District Munsif, Coimbatore.
3. The Record Keeper, VR Section, High Court, Madras.
+ 1 CC To Mr. M.M.Sundaresh, Advocate SR NO.13890
+ 1 CC to the Spl. Government Pleader(CS) SR NO 13815

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